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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1949

No. 583

AMERICAN PRESIDENT LINES, LTD.,
Petitioner,

vs.

AUGUSTUS FEDERER, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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Subject Index

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statement of the case	2
Argument	4
I.	
General principles governing the issuance of writs of certiorari compel a rejection of the instant application	4
II.	
The decision of the Court of Appeals is not in conflict with any applicable decision of this court	7
III.	
Insofar as general maritime principles govern this case, the decision of the Court of Appeals should not be disturbed by this court	13
Conclusion	16

Table of Authorities Cited

Cases	Pages
Aguilar v. Standard Oil (1943), 318 U.S. 724, 63 S.Ct. 930, 87 L.Ed. 1107, 1943 A.M.C. 451	14
Allen Bradley Co. v. Local Union No. 3, Intern. Broth. of Elect. Workers (1945), 325 U.S. 797, 65 S.Ct. 1533, 89 L.Ed. 1939, rehearing den. 66 S.Ct. 11	8
American Federation of Labor v. American Sash and Door, 335 U.S. 538, 69 S.Ct. 260	12
Cosmopolitan Shipping Co. v. McAllister (1949), 337 U.S. 783, 93 L.Ed. 1278	15
Fink v. Shephard SS Co. (1949), 337 U.S. 810, 93 L.Ed. 1287	15
Forsyth v. Hammond (1897), 166 U.S. 506, 41 L.Ed. 1095, 17 S.Ct. Rep. 665	5
Garrett v. Moore-McCormack Co. (1942), 317 U.S. 239, 87 L.Ed. 239	13
J. I. Case Co. v. National Labor Relations Board (1944), 321 U.S. 332, 64 S.Ct. 576, 88 L.Ed. 762	7, 8
N.L.R.B. v. Fansteel Metallurgical Corp. (1939), 306 U.S. 240, 59 S.Ct. 490, 83 L.Ed. 627, 123 A.L.R. 599	8
N.L.R.B. v. Pennsylvania Greyhound Lines (1938), 303 U.S. 261, 58 S.Ct. 571, 82 L.Ed. 831, 115 A.L.R. 307	9
Panama Railroad Co. v. Johnson (1924), 264 U.S. 375, 68 L.Ed. 748, 1924 A.M.C. 551	13
Re Lau Ow Bew (1891), 141 U.S. 583, 35 L.Ed. 868, 12 S.Ct. Rep. 43	4
Re Woods (1892), 143 U.S. 202, 36 L.Ed. 125, 12 S.Ct. Rep. 417	4
Republic Aviation Corp. v. N.L.R.B. (1945), 324 U.S. 793, 65 S.Ct. 982, 89 L.Ed. 557, 157 A.L.R. 1081, rehearing den. 65 S.Ct. 1401, 325 U.S. 894, 89 L.Ed. 2005	8

Page

Socony Vacuum Oil Co. v. Smith (1939), 305 U.S. 424, 59 S.Ct. 262 14

Steeves v. American Mail Lines, Ltd. (C.A. 9), 154 Fed. (2d) 24 6

"The Osceola" (1903), 189 U.S. 158, 47 L.Ed. 760, 23 S.Ct. 483 13

Young v. American SS Co. (1882), 15 Otto 41, 26 L.Ed. 966 11

Statutes

Act of June 25, 1948, 28 U.S.C. 1254(1)..... 2

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OPINIONS BELOW.

The opinion of the District Court is reported at 73 Fed. Supp. 944 (Record *Agnew* case, 366-382.) (The instant case was consolidated on trial and appeal in the Courts below with *American President Lines, Ltd., Petitioner v. James M. Agnew, et al.,* No. 581; and *American President Lines, Ltd., Petitioner v. John W. Griffin, et al.,* No. 582, this Term.) The opin-

ions of the Court of Appeals are reported: *Agnew* case, 177 Fed. (2d) 107; *Federer* and *Griffin* cases, 177 Fed. (2d) 111; and are found in the Record, *Agnew* case 428-434; *Federer* case, 134-137.

JURISDICTION.

In this case, together with the *Agnew* and *Griffin* cases, the Court of Appeals for the Ninth Circuit entered judgment as amended on September 9, 1949. The jurisdiction of this Court is asserted under the Act of June 25, 1948, 28 U.S.C. 1254(1).

QUESTION PRESENTED.

Does this case present issues calling for the issuance of a writ of certiorari?

STATEMENT OF THE CASE.

Respondents in the *Federer* case are seamen who were members of the Stewards Department of the SS President Harrison, an American steam vessel, which departed the port of San Francisco for the Orient on October 15, 1941. During her voyage the late war occurred, and the vessel and her crew were captured west of the 180th meridian by the Japanese on December 8, 1941. The vessel's crew were interned on the vessel until March of 1942, and thereafter in-

terned by the Japanese on land west of the 180th meridian, where they remained until the close of the war. On liberation they were repatriated to the United States, some on August 15, 1945, and some thereafter.

The shipping articles for the voyage contained riders which were prepared by the shipowner. One rider covered the licensed crew, which problems are presented in the *Griffin* case; and the other rider covered unlicensed seamen, covering the respondents in this and the *Agnew* case.

By the riders to these shipping articles the shipowners agreed to pay in addition to base wages certain war bonuses for the period that the seamen were west of the 180th meridian.

The Court of Appeals held that these riders reasonably construed entitled the seamen to war bonus during all of the time that they were interned during the war west of the 180th meridian, whether they were on land or sea during such periods of internment.

In the District Court the shipowner argued that the riders to the shipping articles which it had prepared were ambiguous, and that reference to extrinsic evidence was necessary to clear up such ambiguity. The shipowner argued that certain supplementary bonus agreements between the maritime unions and the shipowner should be construed together with the riders and that if this was done a conclusion was required that bonus was not payable to the seamen west of the 180th meridian while interned on land.

The District Court agreed with this argument, but on the seamen's appeal the Court of Appeals rejected it and held that the riders to the shipping articles were not ambiguous; that if they were, the ambiguity must be resolved against the shipowner which prepared them; that the riders and articles should be construed consonant with traditional principles of liberality toward seamen's rights; and that a fair construction of the articles with riders attached and the supplementary bonus agreements impelled only the conclusion that bonus was payable to the seamen while interned west of the 180th meridian, whether on land or sea.

It is this construction of the contract between the parties that petitioner shipowner now seeks to have reviewed by this Court on certiorari.

ARGUMENT.

I.

GENERAL PRINCIPLES GOVERNING THE ISSUANCE OF WRITS OF CERTIORARI COMPEL A REJECTION OF THE INSTANT APPLICATION.

This Court has said that the power to issue certiorari will be exercised sparingly and only when questions of gravity and importance are involved. *Re Lau Ow Bew* (1891), 141 U. S. 583, 35 L. Ed. 868, 12 Sup. Ct. Rep. 43; *Re Woods* (1892), 143 U.S. 202, 36 L. Ed. 125, 12 Sup. Ct. Rep. 417.

The writ will be issued only when demanded by the importance of the question involved, the necessity of avoiding conflict between two or more courts of appeal, or between courts of appeal and the courts of a state, or some matter affecting the interests of the nation in its internal or external relations. *Forsyth v. Hammond* (1897), 166 U.S. 506, 41 L. Ed. 1095, 17 Sup. Ct. Rep. 665.

To the same effect, Supreme Court Rule 38, 5(b).

Trimmed of all the verbiage and specious argument contained in the petition for the writ, this case resolves itself down to a controversy between petitioner shipowner and respondent seamen concerning the construction of a contract under which the crew embarked on a voyage back in 1941. The contract in question was for this particular voyage and for no other. The problem presented in this case will end with the conclusion of the instant litigation. There is here presented no question of general law which can have importance beyond the confines of this controversy or the interests of these parties.

During the days that preceded the late war many vessels departed on foreign voyages into dangerous waters, and special agreements between crews and shipowners governed those ventures. In almost all of those cases the voyages were completed, the seamen compensated, the ventures concluded. In several cases the vessels either fell into the hands of the enemy and were destroyed or were captured and the crews interned.

Realizing that they were going into dangerous areas, the crew of the President Harrison, speaking through their unions and collective bargaining representatives—in the instant case the National Union of Marine Cooks & Stewards for the Stewards Department—requested and obtained special riders to the articles calling for payments of money commensurate with the risk which the crew took. In the cases of other vessels comparable agreements were made. Things were unsettled and insecure in those days, and special agreements which governed individual voyages were entered into for the purpose of meeting the contingencies which were contemplated. In almost all cases the contingencies did not occur, but in the case of the President Harrison the contingency occurred.

The men being interned during the war by the Japanese, on their repatriation to San Francisco demanded that they be paid wages and war bonus as called for by the articles and riders thereto. The shipowner refused to pay war bonus and the instant litigation ensued. In only several other cases was the problem litigated. One of those was *Steeves v. American Mail Lines, Ltd.*, (C.A. 9), 154 Fed. (2d) 24, which was resolved in favor of the seamen by the very same judge of the Court of Appeals who decided the instant war bonus question in favor of the seamen in this case.

The problem presented here is both obsolete and narrow and involves only the contest between these litigants as to the construction of the contract. That

contract having been construed by the Court of Appeals in favor of the seamen, there is no basis whatever calling for review in this Court. The shipowner concedes that if there is here involved only a question of contract construction this Court will not issue certiorari. (Petitioner's Brief, p. 17.) The question of contract construction is the only question presented.

II.

THE DECISION OF THE COURT OF APPEALS IS NOT IN CONFLICT WITH ANY APPLICABLE DECISION OF THIS COURT.

Petitioner argues that involved here is a question of the application of certain collective bargaining agreements between the unions which represented the crews and the shipowner. It is argued by the shipowner that the seamen in this case have made individual contracts of hire superior to that called for in the collective bargaining (supplementary bonus) agreements, that therefore the collective bargaining agreements are rendered nugatory, and it follows that the collective bargaining process is so disturbed as to call for review and correction by this Court.

Reliance is placed by petitioner upon the decision of this Court in *J. I. Case Co. v. National Labor Relations Board* (1944), 321 U.S. 332, 64 S. Ct. 576, 88 L.Ed. 762.

The argument thus offered is both specious and unsupported by fact or law. The problems presented

in the *Case* case do not remotely resemble the questions we have here, nor are there reasons here calling for a consideration of this case in the light of the *Case* case. In the *Case* case individual contracts of hire were extracted by the employer from individual workmen, which were lesser conditions than those obtained by a general collective bargaining agreement, and it was found that these individual contracts had a deleterious effect on the collective bargaining process and the rights of the workers to union organization.

It must be recalled that the National Labor Relations Act was adopted to correct abuses which had existed theretofore in the matter of the self-organization and representation of working people and that the statute was designed to give workers an opportunity to meet employers upon somewhat equal terms. The rationale of the decision in the *Case* case was to protect the collective bargaining rights of workers. That was the basic purpose of the National Labor Relations Act.

Allen Bradley Co. v. Local Union No. 3, Intern. Broth. of Elect. Workers (1945), 325 U.S. 797, 65 S.Ct. 1533, 89 L.Ed. 1939; rehearing den. 66 S.Ct. 11;

Republic Aviation Corp. v. N. L. R. B. (1945), 324 U.S. 793, 65 S.Ct. 982, 89 L.Ed. 557, 157 A.L.R. 1081, rehearing den. 65 S.Ct. 1401, 325 U.S. 894, 89 L.Ed. 2005;

N. L. R. B. v. Fansteel Metallurgical Corp. (1939), 306 U.S. 240, 59 S.Ct. 490, 83 L.Ed. 627, 123 A.L.R. 599;

N. L. R. B. v. Pennsylvania Greyhound Lines (1938), 303 U.S. 261, 58 S.Ct. 571, 82 L.Ed. 831, 115 A.L.R. 307.

Petitioner argues here that individual contracts of hire in conflict with collective bargaining agreements, whether on better or lesser terms than the collective bargaining agreement, vitiate the collective bargaining process. These are the fallacies of petitioner's argument:

(1) The instant contract contained in the shipping articles and riders thereto resulted from the collective bargaining process and were not individual contracts of hire. They were made by the unions' representatives for the crew as a whole as a result of negotiations and discussions with the shipowner, who in turn reduced the agreement thus reached to writing in those articles and riders thereto. The Stewards Department, which is involved in the instant case, was represented by union officials who met with company officials and reached the agreement put into the riders by the shipowner so far as war bonus was concerned. The wage rates and ratings appearing in the articles proper were obtained from the basic collective bargaining agreement between the National Union of Marine Cooks & Stewards and the shipowners, dated July 5, 1940. It is thus obvious that there were no individual contracts of hire in this case, but rather an agreement between the union and the shipowner which governed all voyages, including the instant voyage, and then a special rider to the articles

for this particular voyage covering the crew as a whole and arrived at through the collective bargaining process. There was no individual contract between any single crew member and the shipowner, which was condemned in the *Case* case. Also unlike the *Case* case, the rider agreement was the result of the collective bargaining process and not of dealing between individual seamen and shipowner. (R., *Federer* case, 103.)

In the *Case* case the workers who had individual contracts of hire had conditions which were poorer than those obtaining under the collective bargaining agreement. In our case the Court of Appeals has decided that the seamen should get what the collective bargaining agreements actually provided, both insofar as the general agreement is concerned and insofar as the war bonus rider agreement for this particular voyage of the *President Harrison* is concerned.

(2) The articles contained the terms of hire and wages and conditions of the crew as required by the Shipping Commissioner Act, 46 U.S.C. §§ 563, 676. What happened in this case, as is the general practice in the shipping industry and has been for many years prior to the commencement of this litigation, is that collective bargaining agreements between maritime unions and shipowners contained the basic rates of pay and conditions of workers and the mode of processing grievances between union and employer.

However, when crews are engaged, the shipping articles contain the agreement between the particular crew and particular vessel, in which instance resort

is had to the collective bargaining agreements to obtain the ratings, rates of pay, and other matters which the law provides must be inserted in the shipping articles. But once the articles have been signed, that constitutes the agreement between shipowner and crew and there is no authority in either to depart from that agreement. The Shipping Commissioners Act was adopted in 1872 to protect seamen against abuses which had long been prevalent in the maritime trade. *Young v. American SS Co.* (1882), 15 Otto 41, 26 L.Ed. 966.

The salutary purposes of this Act call for the protection by the Courts of seamen who are their wards in cases such as this where a shipowner proposes to evade the bargain he has made with his crew. The Court of Appeals sustained respondent seamen in this contention.

(3) There is presented here no general collective bargaining problem under the National Labor Relations Act.

No attempt was made by the seamen here to evade the collective bargaining process or to argue that collective bargaining agreements are not applicable. What the seamen have said here is that the collective bargaining process resulted in the contract which was made and that the shipowner is now seeking to evade its obligations under that contract. The Court of Appeals construed both the articles with the riders thereto and the collective bargaining agreements, including the supplementary war bonus agreements, in reach-

ing its decision. (177 Fed. (2d) 109.) How then can it be said that these seamen are trying to evade the collective bargaining process, or that the Court of Appeals has ignored the question even if it were presented? We assert, however, that there is no collective bargaining question here at all, but that this is the only proposition upon which petitioner can hang its hat to obtain review in this Court of a case which otherwise has been decided against it in the Court of Appeals, and which petitioner has confessed offers no reviewable questions on certiorari to this Court.

Nor is there anything in *American Federation of Labor v. American Sash and Door,* 335 U.S. 538, 69 S.Ct. 260, in conflict with what we have argued here. That case involved only the question of how far a state could go in proscribing certain union activities of a closed shop character. Mr. Justice Frankfurter's concurring opinion, reviewing as it did the history and philosophy of labor's rights to organize as it encountered other social forces, offers no solace for petitioner in attempting to avoid obligations under a contract of which it was the author. If anything, this decision and the ideas there expressed would lead one to conclude that where as here agreement has been reached between seamen and shipowner concerning employment, that the agreement is to be honored.

(4) The National Labor Relations Act as originally adopted protected the right of workers to collective bargaining and the designation of union representatives of the workers' own choice. This we have noted above. Nothing in this case interfered with the

collective bargaining process or the rights of workers thus guaranteed. On the other hand, there is nothing in the case which deprived the shipowner as an employer of any rights which it had under the Act. It recognized the unions of the crew as their collective bargaining representatives and then proceeded to enter into collective bargaining agreements with those unions. Part of the collective bargaining process brought about the riders to the articles of the *President Harrison* calling for war bonus. Accordingly, the entire procedure was in accord with the purposes of the Act and did not in any way detract from its purposes.

III.

INSOFAR AS GENERAL MARITIME PRINCIPLES GOVERN THIS CASE, THE DECISION OF THE COURT OF APPEALS SHOULD NOT BE DISTURBED BY THIS COURT.

The Court of Appeals has pointed out that seamen are the wards of admiralty and that the federal Courts are solicitous in their protection of seamen's rights. (177 Fed. (2d) 108.) This Court has similarly declared on every occasion where seamen's problems have been presented to it.

"The Osceola" (1903), 189 U.S. 158, 47 L.Ed. 760, 23 S.Ct. 483;

Panama Railroad Co. v. Johnson (1924), 264 U.S. 375, 68 L.Ed. 748, 1924 A.M.C. 551;

Garrett v. Moore-McCormack Co. (1942), 317 U.S. 239, 87 L.Ed. 239;

Aguilar v. Standard Oil (1943), 318 U.S. 724, 63 S.Ct. 930, 87 L.Ed. 1107, 1943 A.M.C. 451; *Socony Vacuum Oil Co. v. Smith* (1939), 305 U.S. 424, 59 S.Ct. 262.

The various statutes which have been enacted by the Congress for the protection of seamen's rights attest to the realization by the country generally of the necessity to protect the rights of seamen in order to ensure a strong and well-functioning merchant marine.

Seamen bound to their vessel by articles are subject to the rigorous discipline of the sea. They cannot leave the vessel without visiting upon themselves penalties for desertion. Voyages are oftentimes long and arduous. The exacting nature of the calling has been compensated by liberal protection of seamen's rights and liberal construction of statutes granting seamen benefits. Among those are the statutes protecting their wage guarantees. The Shipping Commissioners Act, requiring as it does all the details of the voyage to be set down, does not permit of departure from the terms of the articles.

Shipowners likewise have been given adequate protection by Congressional enactments. Statutes limiting liability and granting subsidies and other benefits have long existed for the benefit of shipowners. There is every reason why the seamen's rights in this case should be protected. These men went out on a dangerous voyage during desperate days. The contract which they had was in some measure to compensate them in the event anticipated dangers met fulfilment. The

compensation that these men will receive for the years they spent as prisoners of war is small reward for the hardships and privation they underwent.

Under the circumstances of this case where the contract was drawn by the shipowner itself with the thought in mind that perils of war might fall upon the crew as well as the vessel, any reasonable construction of the case which would support an award in favor of the seamen should be affirmed. That was the finding of the Court of Appeals, and no reason exists to disturb that finding here. The argument of the shipowner, accepted by the District Court is a tortured one, unsupported by the facts of the case and fully lacking in logic.

It seems apparent that what the shipowner is trying to do is relitigate the question of the construction of the contract. (Petitioner's Brief, p. 34.) It advances the collective bargaining argument as a wedge to get into this Court to continue litigation on a question of contract construction. We submit that ordinary rules applicable to seamen's rights should prevent such efforts on the shipowner's part.

The argument that this contract is of general application is completely fallacious. There is present here no such matter as that contained in *Cosmopolitan Shipping Co. v. McAllister* (1949), 337 U.S. 783, 93 L.Ed. 1278, and *Fink v. Shephard SS Co.* (1949), 337 U.S. 810, 93 L.Ed. 1287. In those cases the problem of general agency contracts was involved applying to the industry generally, and the question presented was whether the agency contracts made the private shipowner non-suable.

In our case the contract applies to this ship and this shipowner and this voyage and nothing else, and the problem once resolved will affect no one but the parties to this litigation.

CONCLUSION.

There is here no question of general or national importance unless that be to insure that seamen shall obtain the benefits called for by law and their contract, and that result already has been obtained in the Court of Appeals. There is here no conflict between decisions of various courts of appeal, conflict with applicable decisions of this Court or conflict between state and federal courts. Nor is there here presented a question of the construction of any federal statute. The argument of petitioner here is completely makeweight.

We submit that the years of litigation that this case has undergone should finally be terminated with a denial of the petition.

Dated, San Francisco, California,
April 24, 1950.

Respectfully submitted,
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